

THE UNITED STATES DISTRICT COURT  
THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BOBBY SMITH

Plaintiff,

Case No. 06-13301

vs.

DISTRICT JUDGE DENISE PAGE HOOD  
MAGISTRATE JUDGE STEVEN D. PEPE

ALLAN BOSSEL,

Defendant.

**OPINION REGARDING ORDER TO SHOW CAUSE  
& ORDER TO THE U.S. MARSHALS SERVICE TO SERVE PROCESS**

Plaintiff, Bobby Smith, is presently incarcerated by the Michigan Department of Corrections (“MDOC”). On July 21, 2006, Plaintiff filed this action under 42 U.S.C. § 1983 against Defendant, Allan Bossel, alleging violations of his 1st, 8th and 14th Amendment constitutional rights as well as violations of various state and federal laws (Dkt. # 1). In his complaint, Plaintiff alleges that while incarcerated the Mid-Michigan Correctional Facility<sup>1</sup> Defendant, a residential unit officer (“RUO”), opened sealed mail, written by Plaintiff, and intended for Plaintiff’s mother. *Id.* at 4. Defendant allegedly read this mail aloud, including references to Plaintiff’s cell mate in an effort to sow discord, and then acted to have Plaintiff removed from his job in the kitchen. *Id.* at 5.

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<sup>1</sup>Plaintiff is presently incarcerated that Hiawatha Correctional Facility in Kincheloe, Michigan (Dkt. # 16, Ex. 1, p. 7).

On July 23, 2007, this Court issued an order to show cause to Plaintiff as to why this matter should not be dismissed under Federal Rules of Civil Procedure 4(m), due to Plaintiff's failure to effectuate service of the summons and complaint (Dkt # 9). Plaintiff responded on August 7, 2007, that he simply did not know that the onus was upon him to effectuate service (Dkt. # 10).

On December 17, 2007, Plaintiff filed a motion to effectuate service (Dkt. # 16). Plaintiff attached to this motion, as an exhibit, a copy of an MDOC form entitled "Expedited Legal Mail - Prisoner" (Dkt. # 16, Ex. 1, p. 4). While barely legible, the mailing address lists "St. Louis Correction Facility" and "summons in a civil action" upon it. *Id.* Plaintiff signed the form on September 7, 2007, and a mail room employee signed that the letter was placed in the mail on September 10, 2007. Billing for the form appears to have been processed on September 11, 2007.

On September 27, 2007, Plaintiff wrote to District Court Judge Hood stating that his efforts to serve Defendant had been unsuccessful resulting in the summons twice being returned to him (Dkt. # 16, Ex. 1, p. 5). Plaintiff is unsure if his letter ever left the correctional facility where he is held. An MDOC form entitled "Expedited Legal Mail - Prisoner" indicated that this letter to Judge Hood was mailed on October 1, 2007 (Dkt. # 16, Ex. 1, p. 6).

Plaintiff's chief error is that he has tried to effectuate service on his own in contravention of the Federal Rules. *See* Fed. R. Civ. P. 4(c)(2).<sup>2</sup> At the request of a plaintiff, "the court may direct that service be affected by United States marshal, deputy United States marshal, or other

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<sup>2</sup>"Service may be effected by any person who is not a party and who is at least 18 years of age." Fed. R. Civ. P. 4(c)(2).

person or officer specially appointed by the court for that purpose.” *Id.*

Given Plaintiff’s status, as a *pro se* party, his problems effectuating proper service while not excusable are understandable. Accordingly, July 23, 2007, this Court issued an order for service to be effectuated, by the U.S. Marshals, upon Defendant Allan Bossel at his work address:

Mid-Michigan Correctional Facility (SLT)  
8201 N. Croswell Road  
St. Louis, MI 48880

If service were unsuccessful, MDOC was ordered to provide to the U.S. Marshals Service, under seal, Defendant’s last home address (Dkt. #17).

On January 24, 2008, the summons was returned as undeliverable mail for reasons indicated on the envelope to return to sender because Defendant could not be located in the system and the need for an inmate number (Dkt. #18). The reasons for failure to serve appear to be baseless. Defendant, Allan Bossel is the director of the facility, not an inmate within the prison system. Nevertheless, the U.S. Marshals should have provided the last know address of the Defendant as ordered to complete service if service at the facility was not accepted. Because this was not done and the date for the summons expired on January 31, 2008, the Court orders service to be effectuated on Allan Bossel by obtaining from MDOC, under seal, Defendant’s last home address. Costs and fees associated with effectuating service will be charged to Plaintiff. The expiration date on the summons shall be extended to June 15, 2008.

The Clerk shall provide a copy of the summons (with an amended date) and complaint and a copy of this order to the U.S. Marshals Service to effect service .

**SO ORDERED.**

April 11, 2008  
Ann Arbor, Michigan

s/Steven D. Pepe  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Opinion and Order* was served on the attorneys and/or parties of record by electronic means or U.S. Mail on April 14, 2008.

s/ Alissa Greer  
Case Manager to Magistrate  
Judge Steven D. Pepe  
(734) 741-2298